



Montana Manual for Monitoring Compliance with:

➤ ***The MT Youth Court Act***

and

➤ ***The Federal Juvenile Justice
and Delinquency Prevention
Act of 1974 as Amended***

Revised August 2004

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Introduction

Monitoring means to watch, observe, or check for a special purpose. In this case, the special purpose is to see that the goals of the Juvenile Justice Delinquency Prevention Act of 1974, as Amended (the JJDP Act):

- deinstitutionalization of status and non-offenders,
- no contact between adult and youth offenders in institutions,
- remove juveniles from adult jails and lockups and
- reduce disproportionate minority contact with the juvenile justice system.

Whenever the goals of the Montana Youth Court Act are more restrictive than the JJDP Act, they will be used. Monitoring also means the evaluation of how well the purposes of the Acts are being met, and the taking of remedial action where necessary.

For these monitoring purposes the following policy and procedure manual will be utilized in carrying out these tasks.

Section 100: Monitoring Plan

Date Issued:	October/2003
Review Date:	Biennially thereafter
Last Review:	October 2003
Related Federal Law:	JJDP Act Section 223(a) 14
Related CFR:	OJJDP Formula Grants Consolidated Regulation, 28 CFR Part 31
Related Federal Guidance:	Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 1974 as Amended (Revised 9/2003), Section 5
Related MCA:	Title 41, Chapter 5, Part 19 MT Youth Court Act
Related Monitoring Policies:	101, 102, 103

Statement of Purpose:

To provide Montana with a written plan providing for an adequate system of monitoring secure and non-secure facilities to ensure that the requirements of the JJDP Act, related Formula Grant Regulations, and the Youth Court Act are being complied with.

Policy:

The monitoring plan must describe:

1. Barriers, if any faced in implementing and maintaining a monitoring system, and the state and local strategies to overcome such barriers.
2. The legislative and/or administrative procedures that have been established for the state to receive, investigate, and respond to reports of compliance violations.
3. The detailed description of monitoring tasks which includes the identification of the agency responsible for each task.

Procedures:

For purposes of this manual, each of the three tasks described under the above process will be described in detail in policies 101, 102, and 103 respectfully.

Section 101: Monitoring Barriers and Strategies

Date Issued:	October/2003
Review Date:	Biennially thereafter
Last Review:	October/2003
Related Federal Law:	JJDP Act Section 223(a) 14
Related CFR:	OJJDP Formula Grants Consolidated Regulation, 28 CFR Part 31
Related Federal Guidance:	Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 1974 as Amended (Revised 9/2003), Section 5
Related MCA:	Title 41, Chapter 5, Part 19 MT Youth Court Act
Related Monitoring Policies:	100, 102, 103

Statement of Purpose:

To insure that Montana maintains a monitoring system with integrity that is reviewed biennially by identifying barriers, if any, and developing plans to overcome those barriers.

Procedures:

The Montana Board of Crime Control Juvenile Justice Planner will revise and update the Monitoring Manual as soon as the revised MCA Codes are issued at the end of each legislative session (generally October following the end of the session) and identify any legislation that may not be in compliance with or more restrictive than the JJDP Act. Where the Youth Court Act is less restrictive, policies will be written to maintain compliance with the JJDP Act. The Juvenile Justice Specialist will organize a biennial Juvenile Detention Compliance Monitoring Meeting with the Youth Justice Council and primary users, administrators, and monitors of facilities where youth might be securely detained as the result of public authority. The meeting will be scheduled no later than the end of August prior to the commencement of the biennial meeting of the state legislature the following January. The agenda will be to discuss the current non-compliance status of the Youth Court Act with the JJDP Act, other barriers to compliance, and to strategize state and local plans to overcome the barriers or maintain compliance.

1. The Montana Board of Crime Control staff and compliance monitors will submit to the Youth Justice Council for discussion and action a written and oral report on the:
 - A. Barriers faced in implementing and maintaining a monitoring system.
 - B. Recommendations for state and local strategies and plans to overcome those barriers.

- C. Annual report on the number of violations over the prior 2 calendar years.
- 2. From discussion and input, a written plan will be developed to address the barriers in the coming two years, if any.
- 3. The Juvenile Justice Planner and monitoring staff will follow through on the written plan and will provide written and oral updates to the Council during the regular quarterly Council meetings.
- 4. Council written plans may include, but are not limited to the following activities:
 - A. Regional training workshops for those agencies involved in monitoring or implementation of the JJDP Act.
 - B. Administrative meetings with those agencies involved in monitoring or implementation of the JJDP Act.
 - C. Pursuit of state legislation to overcome barriers to monitoring.
 - D. Local coordination, i.e., intensive problem solving and planning for agencies requiring assistance to realize compliance with the Act core requirements.

SECTION 102: Legislative/Administrative Violation Procedures

Date Issued:	October/2003
Review Date:	Biennially thereafter
Last Review:	October/2003
Related Federal Law:	JJDP Act Section 223(a) 14
Related CFR:	OJJDP Formula Grants Consolidated Regulation, 28 CFR Part 31
Related Federal Guidance:	Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 1974 as Amended (Revised 9/2003), Section 5
Related MCA:	Title 41, Chapter 5, Part 19 MT Youth Court Act
Related Monitoring Policies:	100, 101, 103, 300

Statement of Purpose:

To outline the administrative procedures that will be used by MBCC and monitors to receive, investigate, and respond to reports of violation of compliance with established rules and regulations.

Policy:

An Executive Order, issued and signed by Governor Martz, continues the Youth Justice Advisory Council's oversight authority in complying with the JJDP Act of 1974 as amended.

Procedures:

1. The Montana Board of Crime Control (MBCC) designated monitors will perform statewide monitoring; a detailed description of the process and tasks is contained in the policy number 103.
2. The MBCC designated monitors will be the primary agents to discover and report compliance violations throughout the state, and to investigate the violations.
3. When MBCC receives an independent report of a compliance violation, they will utilize their designated monitors to investigate it. Sources may include:
 - The Youth Justice Council
 - Administrators of public and private agencies
 - Interested citizens and/or parents
 - Youth
 - Juvenile Detention Reporting System

4. The process used to receive, investigate and respond to compliance violation reports is:
 - A. Facilities report data directly to Juvenile Detention Reporting System, which calculates violations based on reported data. The Juvenile Justice Planner emails the facility to determine the completeness and accuracy of the data in question. Based on their response, the Planner will determine if a violation actually occurred. If so, were the circumstances unavoidable (i.e., time/distance or weather considerations)? If unavoidable, violation will be reported to OJJDP with supporting documentation and no further follow-up. If reporting error, facility will correct the error and there will be no further follow-up. If avoidable violation, the violation will be reported and the on-site monitor will follow-up during the normally scheduled onsite visit. The JDRS report will act as the information of the violation. No violation additional form will be completed unless the facility has an excessive number of avoidable violations. In that case the planner will request a special onsite visit by a monitor to provide confirm the violation.
 - B. When either a complaint of a violation is made against a facility or a compliance monitor encounters an unreported compliance violation during an on-site visit, the monitor will complete a compliance violation form.
 - C. The monitor will fully investigate the violation following OJJDP Rules and Regulations.
 - D. If, upon investigation, a violation is confirmed, the facility investigated for the compliance violation(s) will receive an on-site visit to explain the nature of the violation, the measures necessary to come into compliance, and to provide education/technical assistance and local coordination to realize full compliance with the Act.
 - E. The MBCC designated monitor will provide follow-up recommendations to the JJ Planner who will determine if intensive follow-up on-site visits are necessary to determine if compliance is still an issue.
 - F. One copy of the compliance violation form will be provided to the facility found to be in violation, one filed at MBCC in the JJ Planner's Compliance Violation Notebook, and one in the Compliance Monitor's Notebook.
 - G. The JJ Planner will receive, at least quarterly, written facility monitoring forms from the designated monitors for the facilities monitored during the quarter. Information from the report will be used to update the facility classification status in the JDR System.
5. MBCC JJ Planner will follow up a compliance violation with any action that is deemed responsible and appropriate to the circumstances.
6. See policy #300 for more information on monitoring authority.

Forms:

- ✓ Compliance Violation Form

Section 103: Description of Monitoring Tasks

Date Issued:	October 2003
Review Date:	Biennially thereafter
Last Review:	October 2003
Related Federal Law:	JJDP Act
Related CFR:	OJJDP Formula Grants Consolidated Regulation, 28 CFR Part 31
Related MCA:	Title 41, Chapter 5, The Youth Court Act
Related Monitoring Policies:	100, 101, 102, 500-507

Statement of Purpose:

To describe the process to be used to identify the monitoring universe and set out the monitoring tasks.

Policy:

MBCC's Juvenile Justice Specialist will annually review with the Juvenile Justice Planner and designated monitors the monitoring tasks to be accomplished during the year as outlined in this policy.

Procedures:

1. The MBCC Juvenile Justice Program Planner will review, biennially, the Compliance Monitoring Manual that describes the plan for an adequate monitoring system, to ensure the requirements of the JJDP Act are being met.
2. The MBCC Juvenile Justice Specialist will schedule annually a meeting in June with the designated monitors and the Juvenile Justice Specialist to share the monitoring tasks and negotiate any necessary contracts for the coming year.
3. A work plan/contract outlining the tasks, the start and completion date, and other duties will be formalized.
4. The monitoring tasks, at a minimum, will include (reference policies 500-507 for complete descriptions):
 - A. Identification of the Monitoring Universe
 - B. Classification of the Monitoring Universe
 - C. Inspection of Facilities
 - D. Data Collection and Verification
 - E. Quarterly Reports to the Youth Justice Council.
 - F. Annual Monitoring Report to the Office of Juvenile Justice and Delinquency Prevention.
 - G. Other related duties as described.

5. The MBCC Juvenile Justice Planner will coordinate the activities of the designated monitors and supervise contracted monitoring services.

Attachments:

- ✓ MBCC Organizational Chart

References:

- ✓ Montana Youth Court Act & Pertinent MCA Notebook Tab 2
- ✓ MBCC Current Contracts with designated monitors..... Notebook Tab 4
- ✓ Current Monitoring timetable..... Notebook Tab 5

Section 200: Monitoring System

Date Issued:	October/2003
Review Date:	Biennially thereafter
Last Review:	October/2003
Related Federal Law:	JJDP Act Section 223(a) 14
Related CFR:	OJJDP Formula Grants Consolidated Regulation, 28 CFR Part 31
Related Federal Guidance:	Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 1974 as Amended (Revised 9/2003), Section 5
Related MCA:	Title 41, Chapter 5, Part 19 MT Youth Court Act
Related Monitoring Policies:	500-507

Statement of Purpose:

To be effective in achieving the monitoring requirements and goals, the statewide monitoring system must be planned in such a way that the system can identify all secure and non-secure residential facilities in which juveniles may be placed under public or court authority. At its optimal level, the system must be able to keep track of the juveniles at each step in the confinement process; it must be capable of locating and recording the number and classification of juveniles confined in each residential facility and the number and type of incidents of noncompliance with the JJDP Act and Youth Court Act. To this end, all applicable laws, regulations, standards, guidelines, policies, etc., must be clearly defined in written form, and made available to all persons involved with the incarceration of juveniles on a need to know basis.

Policy:

The actual monitoring system is outlined in policies 500-507. This policy provides a general description of the monitoring system, and specifies the availability of all laws, regulations, standards, guidelines, and policies to all persons involved with the incarceration of juveniles.

Procedures:

1. The MBCC designated monitors will maintain in addition to this policy and procedure manual:
 - All applicable Federal Guidelines and Federal Registers.
 - A compilation of the JJDP Act.
 - A compilation of the Montana Youth Court Act
 - The Montana Juvenile Detention Manual and Custody Requirements that provide contacts for licensing requirements for facilities that house youth in Montana.

- Any other related state or federal policies and procedures.
- 2. The MBCC designated monitors, during their on-site inspections, will distribute the Montana Juvenile Detention Manual or the Sample Juvenile Custody Policy and Procedures for Montana Law Enforcement Departments to agencies involved with the incarceration of juveniles, or other interested parties. The MBCC Juvenile Program will also maintain a current copy of these manuals on their web page for download by any interested party at:

<http://www.mbcc.state.mt.us/juvjust/index.shtml>

Appendices:

- ✓ Sample Juvenile Custody Policy and Procedures for Montana Law Enforcement Departments
- ✓ Montana Juvenile Detention Manual and Custody Requirements

Section 300: Monitoring Authority

Date Issued:	October/2003
Review Date:	Biennially thereafter
Last Review:	October/2003
Related Federal Law:	JJDP Act Section 223(a) 14
Related CFR:	OJJDP Formula Grants Consolidated Regulation, 28 CFR Part 31
Related Federal Guidance:	Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 1974 as Amended (Revised 9/2003), Section 5
Related MCA:	Title 41, Chapter 5 MT Youth Court Act
Related Monitoring Policies:	102

Statement of Purpose:

The agency responsible for monitoring should have legal authority to monitor all facilities in which juveniles might be placed under court authority. The authority should be sufficiently broad to permit the monitoring agency to require each facility that could be classified as a secure detention or correctional facility to be inspected for classification purposes, to maintain specific juvenile admission and release records and permit the designated monitors to review these records at selected intervals during the year.

Policy:

The basic authority should give MBCC the right to develop and enforce, pursuant to state statutes, standards for all secure facilities that might hold juveniles, to inspect the facilities for compliance, to cite facilities for violations of the standards, and to enforce sanctions when violations are not corrected.

Staff monitors should be permitted to review records containing detention information with the written agreement that the monitors will respect the confidential nature of the information and will not knowingly record or divulge information, which might identify a specific child except as may be required to protect the child.

Effective monitoring and enforcement can only be fully implemented when the agency's legal responsibility is defined in clear terms and is known to all parties.

Procedures:

- I. State statute provides that MBCC approve holdover facilities (MCA 41-5-103(22)), monitor compliance with the JJDP Act and the Youth Court Act, and the rulemaking authority to carry out that responsibility (MCA 41-5 Part 19). The Governor's

Executive Order gives the Youth Justice Council of MBCC the responsibility for complete administration and implementation of the Juvenile Justice and Delinquency Prevention Act of 1974, as required by Sections 223 of the Act. Therefore:

1. The Youth Court Act limits the placement of youth as the result of public authority. Within those limitations, statutes assign MBCC with approval of non-secure holdover facilities, the Department of Public Health and Human Services is charged with quality assurance over all other non-secure placements as well as secure placements to residential mental hospitals. The Department of Corrections is charged with licensing all secure juvenile detention and collocated facilities and operation of juvenile correctional facilities. The statutes do not assign licensing standards for adult jails and lockups, however, most jails and lockups are operated by the County Sheriff's office that accesses liability insurance for their facilities through the Montana Association of Counties (MACo).
2. The *Sample Juvenile Custody Policy and Procedures for Law Enforcement Departments* will provide the minimum standards by which adult jails and lockups will be monitored.
3. The *Holdover Program Policies/Procedures Resource Manual* will provide the minimum standards by which non-secure holdover programs will be monitored.
4. The *Montana Juvenile Detention Manual* will provide the minimum standards by which licensed juvenile detention, collocated, and juvenile correctional facilities will be monitored.
5. Monitors will make available during all on-site inspections a written statement from MBCC that defines in clear and understandable terms the basis of authority for monitoring.
6. Monitors will report directly to the Juvenile Justice Planner. MBCC retains the accountability for the overall performance of the monitoring tasks.

Attachments:

- ✓ Governor's Executive Order
- ✓ MBCC introductory letter of monitoring authority

Appendices:

- ✓ Holdover Program Policies/Procedures Resource Manual

Section 400: Compatibility of Definitions

Date Issued:	October/2003
Review Date:	Biennially thereafter
Last Review:	October/2003
Related Federal Law:	JJDP Act Section 223(a) 14
Related CFR:	OJJDP Formula Grants Consolidated Regulation, 28 CFR Part 31
Related Federal Guidance:	Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 1974 as Amended (Revised 9/2003), Section 5
Related MCA:	Title 41, Chapter 5 MT Youth Court Act
Related Policies:	200, 504, 507

Statement of Purpose:

In classifying facilities and identifying the types of offense behavior of the juvenile to be counted for monitoring purposes, Montana needs to operate under definitions that are compatible with those found in the Formula Grant Regulations.

Policy:

MBCC will adopt and follow OJJDP definitions for monitoring.

Procedures:

- I. The definitions from the Formula Grant Regulations, the JJDP Act, and the OJJDP Guidance Manual will take precedence over State definitions and will be used for monitoring purposes.
- II. When identifying and classifying the following definitions will be used, located in the respective section of the Formula Grant regulations (28 CFR) or the OJJDP Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 1974, as Amended (OJJDP Guidance Manual). Related Youth Court Act Definitions referenced in blue.
 - *Adult jail.* A locked facility, administered by State, county or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than one year (28 CFR 31.304(m)). [MCA 41-5-103\(23\) Jail](#)
 - *Adult Lockup.* Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature that does not hold persons after they have been formally charged (28CFR 31.304(n)). [MCA 41-5-103\(23\) Jail](#)

- *Civil-type offender.* A juvenile offender who has been charged with or adjudicated for an offense *that* is civil in nature. Examples include noncriminal traffic¹ violations and noncriminal fish and game violations (page 53, *OJJDP Guidance Manual*). [MCA 41-5-103\(50\) Youth in need of intervention](#)
- *Collocated facility.* A collocated *facility* is a juvenile facility that is located in the same building as an adult jail or lockup or is part of a related complex of buildings located on the same grounds as an adult jail or lockup. A complex of buildings is considered “related” when it shares physical features such as walls and fences or services beyond mechanical services (heating, air conditioning, water and sewer) (28 CFR 31.303(e)(3)(i)(A)). Each of the following four criteria must be met in order to ensure the requisite separateness of a juvenile detention facility that is collocated with an adult jail or lockup:
 1. The facility must ensure separation between juveniles and adults such that there could be no sustained sight or sound contact between juveniles and incarcerated adults in the facility. Separation can be achieved architecturally or through time phasing of common use nonresidential areas; and
 2. The facility must have separate juvenile and adult program areas, including recreation, education, vocation, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention facility that provides for a full range of separate program services. No program activities may be shared by juveniles and incarcerated adults. Time phasing of common use non-residential areas is permissible to conduct program activities. Equipment and other resources may be used by both populations subject to security concerns; and
 3. The facility must have separate staff for the juvenile and adult populations, including management, security, and direct care staff. Staff providing specialized services (e.g., medical care, food service, laundry, maintenance, and engineering) who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juveniles and adults can serve both populations (subject to State standards or licensing requirements). The day-to-day management, security, and direct care functions of the juvenile detention center must be vested in a totally separate staff, dedicated solely to the juvenile population within the collocated facilities; and
 4. In States that have established standards or licensing requirements for juvenile detention facilities, the juvenile facility must meet the standards on the same basis as a freestanding juvenile detention center, and be licensed as appropriate. If there are no State standards or licensing requirements, OJJDP encourages States to establish administrative requirements that authorize the State to review the facility’s physical plant,

¹ In Montana, all youth taken into custody are under the jurisdiction of the Youth District Court, however, District Court does not have concurrent jurisdiction for traffic offenses, even if they are criminal. Therefore, secure detention of youth for a traffic offense of any kind is a violation of the Youth Court Act.

staffing patterns, and programs in order to approve the colocated facility based on prevailing national juvenile detention standards.

The State must determine that the four criteria are fully met. It is incumbent upon the State to make the determination through an onsite facility (or full construction and operations plan) review and, through the exercise of its oversight responsibility, to ensure that the separate character of the juvenile detention facility is maintained by continuing to fully meet the four criteria set forth above.

A monitoring checklist has been developed by OJJDP for each of the criteria. The checklist is attached. [MCA 41-5-103\(49\)\(a\)\(ii\) Collocated facility](#)

- **Contact.** Any physical or *sustained* sight and sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees. Sight contact is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between incarcerated adults and juvenile offenders (28 CFR 31.303(d)). [MCA 41-5-349\(3\)\(c\) limitations on placement of youth in jails or other adult detention facility.](#)
- **Court Holding facility.** A *court* holding facility is a *secure* facility, other than an adult jail or lockup, that is used to temporarily detain persons immediately before or after detention hearings or other court proceedings (page 53, OJJDP Guidance Manual. (**Caution: Don't confuse this with the *non-secure "Holdover"* defined in MCA 41-5-103(22) of the Youth Court Act.**) [MCA 41-5-103\(15\) Detention facility](#)
- **Criminal Offender.** Reference definitions for *Other individuals accused or convicted of criminal offenses* below. [MCA 41-5-103\(9\) Criminally convicted youth](#)
- **Criminal-type offender.** A juvenile offender who has been charged with or adjudicated for conduct that would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult (28 CFR 41.304(g)). A juvenile held for criminal contempt remains a status offender unless: 1) the offense done by the offender that resulted in the criminal contempt charge would have been a crime, other than contempt, if done by an adult; or 2) the court order violated by the youth was issued by a process that meets the federal definition of a valid court order (VCO). As status offenders, juveniles who violate a VCO cannot be held in an adult jail or lockup for any length of time (Pages 19-23, *OJJDP Guidance Manual*). (Montana's informal and formal court proceedings do not meet the requirements of the Federal VCO process and MCA 41-5-1431(3) specifically disallows any disposition for violation of probation that was not available in the original case.) [MCA 41-5-103\(11\) Delinquent youth](#)
- **Delayed egress device.** A *device* that precludes the use of exits for a predetermined period of time (Page 53, *OJJDP Guidance Manual*)

- *Delinquent offender.* Reference definition for *Criminal-type offender* above. [MCA 41-5-103\(11\) Delinquent youth](#)
- *Facility.* A place, an institution, a building or part thereof, set of buildings, or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned and/or operated by public and private agencies (28 CFR 31.304(c)).
- *Juvenile offender.* An individual subject to the exercise of juvenile court jurisdiction for purposes of *adjudication* and treatment based on age and offense limitations as defined by State law, i.e., a criminal-type offender or a status offender (28 CFR 31.304(f)).
- *Juvenile who is accused of having committed an offense.* A juvenile with respect to whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender, and no final adjudication has been made by the juvenile court (28 CFR 31.304(d)).
- *Juvenile who is adjudicated as having committed an offense.* A juvenile with respect to whom the juvenile court has determined that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender (28 CFR 31.304(e)).
- *Lawful custody.* The exercise of care, supervision, and control over a juvenile offender or non-offender pursuant to the provisions of the law or of a judicial order or decree (28 CFR 31.304(j)). [MCA 41-5-321 & 322 Taking into and release from custody](#)
- *Non-offender.* A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes, for reasons other than legally prohibited conduct of the juveniles (28 CFR 31.304(i)). [MCA 41-3-102\(29\) Youth in need of care](#)
- *Nonsecure custody.* A juvenile may be in law enforcement custody and, therefore, not free to leave or *depart* from the presence of a law enforcement officer or at liberty to leave the premises of a law enforcement facility, but not be in a secure detention or confinement status. The November 2, 1988, Federal Register announcement, Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups; Notice of Final Policy, states that the following policy criteria, if satisfied, will constitute non-secure custody of a juvenile in an adult jail or lockup facility:
 1. The area(s) where the juvenile is held is an unlocked multipurpose area, such as a lobby, office, or interrogation room which is not designated, set aside, or used as a secure detention area or is not part of such an area, or if a secure area, is used only for processing purposes;
 2. The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility;
 3. The use of the area(s) is limited to providing non-secure custody only long enough for and for the purposes of identification, investigation, processing,

release to parents, or arranging transfer to an appropriate juvenile facility or to court;

4. In no event can the area be designed or intended to be used for residential purposes; and
5. The juvenile must be under continuous visual supervision by a law enforcement officer or facility staff during the period of time that he or she is in non-secure custody.

In addition, a juvenile placed in the following situations would be considered in a non-secure status:

- If certain criteria are met, a juvenile handcuffed to a non-stationary object: Handcuffing techniques that do not involve cuffing rails or other stationary objects are considered non-secure if the five criteria above are adhered to.
- If certain criteria are met, a juvenile being processed through a secure booking area: Where a secure booking area is all that is available, and continuous visual supervision is provided throughout the booking process, and the juvenile remains in the booking area only long enough to be photographed and fingerprinted (consistent with State law and/or judicial rules), the juvenile is not considered to be in a secure detention status. Continued non-secure custody for the purposes of interrogation, contacting parents, or arranging an alternative placement must occur outside the booking area.
- A juvenile placed in a secure police car for transportation: The JJDP Act applies to secure detention facilities and secure correctional facilities, so a juvenile placed in a secure police car for transportation would be in a non-secure status.
- A juvenile placed in a non-secure runaway shelter, but prevented from leaving due to staff restricting access to exits: A facility may be non-secure if physical restriction of movement or activity is provided solely through facility staff.
- *Other individual accused of having committed a criminal offense.* An individual, adult or juvenile, who has been charged *with* committing a criminal offense in a court exercising criminal jurisdiction (28 CFR 31.304(k)). [MCA 41-5-103\(9\) Criminally convicted youth \(accused would be after transfer hearing under 41-5-206 if case is retained in district court\)](#)
- *Other individual convicted of a criminal offense.* An individual, adult or juvenile, who has been convicted of a *criminal* offense by a court exercising criminal jurisdiction (28 CFR 31.304(l)). [MCA 41-5-103\(9\) Criminally convicted youth \(accused would be after transfer hearing under 41-5-206 if case is retained in district court\)](#)
- *Private agency.* A private non-profit agency, organization or institution is: (A) Any corporation, foundation, trust, *association*, cooperative, or accredited institution of higher education not under public supervision or control; or (B) Any other agency, organization or institution which operates primarily for scientific, education, charitable service or similar public purposes, but which is not under

public supervision or control, and no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held by IRS to be tax exempt under the provisions of section 501 (c) (3) of the 1954 Internal Revenue Code (28 CFR 31.304(a)).

- *Public agency.* The term “public agency” means any State, unit of local government, combination of such States or *units*, or any department, agency or instrumentality of any of the foregoing (42 USC 5603 Sec. 103(11)).
- *Secure Custody.* As used to define a detention or correctional facility, this term includes residential facilities that *include* construction features designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff (28CFR 31.304(b)).
- *Secure juvenile detention center or correctional facility.* A secure juvenile detention or correctional facility is any *secure* public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or nonoffenders (28 CFR 31.303(n)(f)(2)). Many States use the term “training school” for juvenile correctional facilities. [MCA 41-5-103\(49\) Youth detention facility & MCA 41-5-103\(40\) State youth correctional facility.](#)
- *Staff secure facility.* A Staff secure facility may be defined as a residential facility (1) which does not include *construction features* designed to physically restrict the movements and activities of juveniles who are in custody therein; (2) which may establish reasonable rules restricting entrance to and egress from the facility; and (3) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision. [MCA 41-5-103\(37\) Shelter care & \(38\) Shelter care facility](#)
- *Status offender.* A juvenile offender who has been charged with or adjudicated for conduct that would not, under the law of the jurisdiction in which the offense was committed, be a *crime* if *committed* by an adult (28 CFR 31.304(h)). A juvenile held for criminal contempt remains a status offender unless: 1) the offense done by the offender that resulted in the criminal contempt charge would have been a crime other than contempt if done by an adult; or 2) the court order violated by the youth was issued by a process that meets the federal definition of a valid court order (VCO). As status offenders, juveniles who violate a VCO cannot be held in an adult jail or lockup for any length of time (Pages 19-23, *OJJDP Guidance Manual*). The following are examples of status offenses:
 - Truancy
 - Violations of curfew
 - Unruly or ungovernable
 - Runaway
 - Underage possession and/or consumption of tobacco products

Underage possession and/or consumption of alcohol. This offense is always considered a status offense, even though State or local law may consider it a criminal-type offense. [MCA 41-5-103\(50\) Youth in need of intervention](#)

- **Valid Court Order (VCO).** The term means a court order given by a juvenile court judge to a juvenile who has been brought before the court and made subject to a court order. The use of the word “valid” permits the incarceration of juveniles for violation of a valid court order only if they received their full due process rights as guaranteed by the Constitution of the United States (28 CFR 31.304(o)). (Reference “Summary of the Valid Court Order (VCO) Process” attached.) ***(Note: Montana no longer makes use of the VCO Process for status offenders. Reference MCA 41-5-103(11) Delinquent youth, 41-5-341(2) Criteria for placement of youth in secure detention facilities, 41-5-345 Limitation on placement of youth in need of intervention, 41-5-349(2) Exceptions of youth not to be detained in jail, 41-5-1431(3)) Probation revocation disposition, 41-5-1512(o)(i), and second paragraph page 23 federal guidelines manual re: state common laws and use of traditional contempt)***

References:

- ✓ VCO Exception Summary Tab 3
- ✓ Montana Youth Court Act & Pertinent MCA Tab 2

Section 500: Monitoring Tasks

Date Issued:	October/2003
Review Date:	Biennially thereafter
Last Review:	October/2003
Related Federal Law:	JJDP Act Section 223(a) (11), (12), (13) & (14)
Related CFR:	OJJDP Formula Grants Consolidated Regulation, 28 CFR Part 31
Related Federal Guidance:	<i>Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 1974 as Amended (Revised 9/2003), Section 5</i>
Related MCA:	Title 41, Chapter 5 MT Youth Court Act
Related Policies:	501 - 507

Statement of Purpose:

The JJDP Act states in section 223 (14) that states must provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to ensure that the requirements of paragraph (11), D.S.O.; paragraph (12), sight and sound separation; and paragraph (13), jail removal; are met, and for annual reporting of the results for such monitoring to the OJJDP Administrator.

Policy:

The four major monitoring tasks are as follows:

1. Identification of the Monitoring Universe.
2. Classification of the Monitoring Universe.
3. Inspection of facilities.
4. Data Collection and Verification.

Each of these four tasks will be addressed in policies 501-504 and will describe the process to be utilized. In addition policies 505-507 will respectively address:

5. Monitoring Report Period.
6. Method of Reporting.
7. Compliance Issues.

Procedures:

To complete the four monitoring task requirements and the three additional tasks please refer to policies 501-507.

References:

- ✓ JJDP Act, 223(14) Tab 3, JJDP Act
- ✓ 28 CFR 12/10/96 Tab 3, Federal Regulations

Section 501: Identification of the Monitoring Universe

Date Issued:	October/2003
Review Date:	Biennially thereafter
Last Review:	October/2003
Related Federal Law:	JJDP Act Section 223(a) (11), (12), (13) & (14)
Related CFR:	OJJDP Formula Grants Consolidated Federal Regulation, 28 CFR Part 31
Related Federal Guidance:	<i>Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 1974 as Amended (Revised 9/2003), Section 5</i>
Related MCA:	Title 41, Chapter 5, Part 19 MT Youth Court Act
Related Policies:	500, 502 -507

Statement of Purpose:

OJJDP requires States (Formula Grant recipients) participating in the JJDP Act of 1974, As amended, to establish and maintain an adequate monitoring plan and system for purposes of compliance with the Act and for OJJDP audits. This policy relates to the annual identification of the monitoring universe.

Policy:

The Juvenile Justice Planner will annually update the master list of the monitoring universe for the purpose of inclusion or exclusion pursuant the OJJDP rules and regulations.

The OJJDP Guidance Manual, page 33, states: "This refers to the identification of all facilities in the State which might hold juveniles pursuant to public authority. Every facility which has this potential, regardless of the purpose for housing juveniles, come under the purview of the monitoring requirements. This also includes those facilities owned or operated by public and private agencies."

Procedures:

1. On or before 6/30 of each year the Juvenile Justice Planner will query the following about facility identification information:
 - a. Law Enforcement Facilities, including Jails and Lockups:
 - Montana Association of Counties (MACo), Risk Assessment Manager, 457-7210

- Montana Police Officers' Association, Current Listing in Criminal Justice Directory
- Montana Sheriff's Officers' Association, Current Listing in Criminal Justice Directory
- b. Licensed youth care facilities:
 - Montana Department of Public Health and Human Services
 - Quality Assurance Division, Residential Treatment facilities, 444-6587
 - Child Protective Services Division, Youth Care Facilities, 444-6411
- c. Licensed juvenile detention facilities, juvenile correctional facilities, and collocated facilities:
 - Montana Department of Corrections
 - Juvenile Correctional facilities including placement contracts, Juvenile Corrections Administrator, 444-0851
 - Licensed juvenile detention facilities, Quality Assurance Division Detention Licensing, 444-7471
- d. Local placement options, including contracted services:
 - County Commissions – current listing in Criminal Justice Directory
 - Facility monitoring reports
- e. Youth placement committees per 41-5-121 through 124
 - Obtain list from Montana Department of Corrections
- f. Other placements in use:
 - Governor's Office on Mental Disabilities
 - Board of Visitors, Executive Director, 444-3955
 - Montana Advocacy Program
 - PAIMI Advocate, 449-2413 x214
- 2. The query will request identification information on: current facilities, planned facilities, and contracts they have with private facilities. Additionally, information will be collected on standards, licensing and inspection procedures.
- 3. All facility information gathered will be included in updating the Facility Master List, located within the Monitoring Universe Book.

References:

- ✓ *Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 1974 as Amended (Revised 9/2003)* Tab 3
- ✓ *Formula Grant Regulations 12/10/1996*..... Tab 3, *Federal Regulations*

Section 502: Classification of the Monitoring Universe

Date Issued:	October/2003
Review Date:	Biennially thereafter
Last Review:	October/2003
Related Federal Law:	JJDP Act Section 223(a) (11), (12), (13) & (14)

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Related CFR:	OJJDP Formula Grants Consolidated Federal Regulation, 28 CFR Part 31
Related Federal Guidance:	<i>Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 1974 as Amended (Revised 9/2003), Section 5</i>
Related MCA:	Title 41, Chapter 5, Part 19 MT Youth Court Act
Related Policies:	500, 501, 503 -507
Related OJJDP Regulations:	OJJDP Guidance Manual Formula Grant Consolidated Regulations

Statement of Purpose:

OJJDP requires that states, (Formula Grant recipients) participating in the JJDP Act of 1974, as amended, establish and maintain an adequate monitoring system and plan for purposes of compliance with the Act and for OJJDP compliance audits. This policy relates to the annual classification process of the monitoring universe.

Policy:

The designated monitors will during their on-site monitoring visits, review and classify and/or reclassify, all facilities listed in the Facility Master List located within the Monitoring Universe Book. As defined in the Federal Register, June 20, 1985, page 25558, "This is the classification of all facilities to determine which ones should be considered as a secure detention or correctional facility, an adult correctional facility, an adult correctional institution, jail, lockup, or other type of secure or non-secure facility."

The OJJDP Guidance Manual, page 27, states: "States must determine whether or not a facility in which juveniles are detained or confined is an adult jail, adult lockup, or a secure juvenile detention center or correctional facility. The JJDP Act prohibits the secure custody of juveniles in adult jails and lockups. Juvenile facilities collocated with adult facilities are considered adult jails or lockups absent compliance with the four criteria listed in this section. A facility adhering to the four criteria would qualify as a separate secure juvenile detention center or correctional facility for the purpose of monitoring for compliance with DSO, jail removal, and separation."

For purposes of this Policy there will be three categories for classification to each facility:

1. Is it public or private?
2. Is it a juvenile facility, adult facility, or used for both?
3. Is it secure or non-secure?

For purposes of this policy and for classification the definitions listed in policy 400 will be used.

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Procedures:

1. All state operated or contracted adult correctional facilities and halfway houses will be classified as secure adult facilities and will not be subject to MBCC monitoring. This is based on Montana State Statutes, which prohibit the confinement of juveniles, unless charged and sentenced as adults, and is enforceable through Judicial practice. This is consistent with OJJDP Regulations on exclusion from inspection and data collection.
2. MBCC monitors will classify all county operated jails, lockups, and unlicensed collocated detention facilities as public, secure facilities that may be used for the incarceration of juveniles and/or adults. A minimum of 1/3 of all of these facilities will be monitored annually. These facilities must report data monthly, or state in writing, that they did not hold youth.
3. All other facilities not discussed under #2 will be classified as follows:
 - A. All facilities public and private, in which youth may be placed pursuant to court authority, must have a state agency or county commission with oversight supervision. The state agencies with oversight supervision authority are:
 1. Department of Corrections
 - Juvenile Division Administrator – placement contracts, juvenile correctional facilities, and transition centers
 - Juvenile Division Quality Assurance – Licensed juvenile detention and collocated facilities
 2. Department of Public Health and Human Services
 - Quality Assurance Division – Secure Residential treatment facilities
 - Child Protective Services Division – Non-secure Youth care facilities
 3. Supreme Court
 - Court Services Division – Youth Placement Committee placement options
 4. County Commissioners
 - Fiscal Units – payees for out of home placement of youth
 - B. Biennially, the MBCC Juvenile Justice Planner will send the prior biennium's list of facilities to the Department Head of each agency listed under 3A for update and classification purposes. Classification will be completed on all facilities that they operate directly, provide funding to, use for youth placement, license, and/or supervise. The directories of programs and placements will be classified and filed.
4. Facilities classified as secure, public or private, juvenile and/or adult will be subject to inspections as outlined in policy 503, *unless they are residential*

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treatment centers with Joint Accreditation of Hospitals (JACo) which do not require monitoring in accordance with the JJDP Act because MCA 41-5-1504 requires that no youth may be placed in a secure mental health facility unless they are suffering from a mental disorder as defined in MCA 53-21-102 and who meets the criteria in 53-21-126(1) is entitled to all rights provided by 53-21-114 through 53-21-119 of the mental health statutes. These facilities are monitored by the Quality Assurance Division of the Department of Public Health and Human Services.

5. Specific policies, judicial practices and legislation as they pertain to the placement of juveniles in non-secure agencies listed under 3A are contained in the Appendices. They provide guidance on classification.

Forms:

- ✓ Monitoring Classification Master list
- ✓ Collocated Checklist

Appendix:

- ✓ Juvenile Holdover Policy and Procedures
- ✓ DPHHS Quality Assurance Statutes
- ✓ DPHHS Child Protective Services Statutes

References:

- ✓ Youth Court Act and Pertinent MCA..... Tab 2

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Section 503: Inspection of Facilities and Records Systems

Date Issued:	October/2003
Review Date:	Biennially thereafter
Last Review:	October/2003
Related Federal Law:	JJDP Act Section 223(a) (11)-(14)
Related CFR:	OJJDP Formula Grants Consolidated Federal Regulation, 28 CFR Part 31
Related Federal Guidance:	<i>Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 1974 as Amended (Revised 9/2003), Section 5</i>
Related MCA:	Title 41, Chapter 5, Part 19 MT Youth Court Act
Related Policies:	500- 502, 504- 507

Statement of Purpose:

Inspection of facilities is required to classify according to regulations and to review whether adequate sight and sound separation occurs for juveniles housed in facilities that also confine adult offenders. Such inspections are necessary to provide the protections required by the Act and to determine whether adequate data are maintained to determine compliance with the statutory requirements. The inspection process should include a method of reporting compliance with the separation requirements for each secure facility, which holds both juvenile and adult offenders. Reports on each facility's compliance or non-compliance will be made available to the facility as a record of findings of the inspection. Each facility will have a file in the appropriate file in MBCC Juvenile Justice Planner's Office, located at MBCC that will contain:

1. Forms completed at last on-site monitoring visit.
2. Correspondence

Process:

The MBCC staff monitor will inspect facilities to ensure an accurate assessment of each facility's classification and record keeping. The inspection will include:

1. A review of the physical accommodations to determine whether it is a secure or non-secure facility.
2. To determine the level of sight and sound separation between juveniles and adults.
3. To review the record keeping system to determine whether sufficient data are maintained to determine compliance with Section 223 (a)(11), (12), (13), and (22) of the JJDP Act and Title 41, Chapter 5 of the Youth Court Act, whichever is more restrictive.

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The following guidelines will be used in determining which facilities will receive an on-site inspection:

1. All facilities classified as secure juvenile detention, collocated or juvenile correctional facilities will be subject to annual data collection and inspection.
2. All facilities classified as adult jails and lockups will be subject to annual data collection and be inspected a minimum of once in every three years.
3. All facilities approved by MBCC as holdover facilities in accordance with MCA 41-5-103(22) will not be subject to data collection, but will be inspected a minimum of once in every three years.

Procedures:

1. MBCC staff monitors, 10 days prior to a regular on-site inspection, will notify the facility administrator of the date and time of inspection. An on-site visit may be made without prior notice to the facility to investigate an allegation of a compliance violation or as follow-up to a documented compliance violation.
2. At all inspections a Juvenile Detention Monitoring form, will be completed, signed by the Monitor and the facility administrator. One copy of the form *and attachments* will be given to the facility administrator, one will be retained in the Monitor's notebook and the original given to the Juvenile Justice Planner to review and place in the appropriate facility file located in the Planner's office at MBCC.
 - A. A thorough record keeping review will be conducted to ensure all facilities keep records consistent with OJJDP Rules and Regulations and should, *at a minimum*, include youth's:
 1. Name or ID number
 2. Date of Birth
 3. Sex
 4. Race/ethnicity
 5. Most serious offense (if most serious offense is probation violation or criminal contempt, then most serious offense from the original case must also be included)
 6. Court of jurisdiction
 7. Date and time of admission to secure detention
 8. Date and time of release from secure detention
 9. Date and time of probable cause hearing, if any
 10. Type of hold (secure vs. non-secure)
 11. Name and relationship of person to whom juvenile was released
3. At all inspections of facilities that hold both adults and juveniles a Collocated Facility Checklist will be completed, attached to and become part of the Juvenile Detention Monitoring Form.

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4. At all inspections of adult jails, adult lock-ups or unlicensed collocated facilities, a Rural Exception Checklist will be completed, attached to and become part of the Juvenile Detention Monitoring Form to determine if the facility qualifies to access the federal rural exception subject to the more restrictive requirements of the Youth Court Act.
5. The MBCC staff monitors will provide technical assistance to those facilities not in compliance with record keeping requirements and state and federal statutes. If youth were held in violation of the JJDP Act, a Compliance Violation Form will be completed, attached to and become part of the Juvenile Detention Monitoring form.
 - A. In cases where there is non-cooperation in aligning their systems to OJJDP requirements, it will be brought to the prompt attention of the MBCC Juvenile Justice Planner by the MBCC staff monitors in written form for further action.
6. All facilities subject to inspections will also be subject to data maintenance and data verification.
7. A master facility list, to be retained in the Juvenile Detention Reporting (JDR) System, will be maintained by the MBCC Juvenile Justice Planner, and will contain the following information:
 - A. Name of facility subject to inspection.
 - B. Judicial District and County where facility is located
 - C. Classification of the facility at the last on-site inspection
 - D. Reporting status.
 - E. Date of last on-site inspection.
 - F. Facility Address and phone number.
 - G. Metropolitan Statistical Area status of the area where facility is located.
 - H. Sight and Sound Separation status of the facility at the last on-site inspection. (i.e., facility is/isn't physically sight & sound separate, if not physically sight and sound separate, whether separation is maintained through policy & procedure.
 - I. If collocated facility, until state develops policy for training staff that work with both juveniles and adults have been trained to work with juveniles, that adults and juveniles have separate staff.

The MBCC Juvenile Justice Planner will update the JDRS list at least annually based on information provided in the Juvenile Detention Monitoring Form and information provided by the Department of Corrections Licensing Division. All facilities subject to monitoring will be required to designate a person to submit information on youth securely held at the facility at least monthly on the JDR System. If no youth were held during the month, the designated person will send an email to the JJ Planner at cirobinson@state.mt.us that states the name of the facility and the month and year for which no youth were held. These emails will be placed in the appropriate facility file located in the office of the Juvenile Justice Planner.

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Forms:

- ✓ Juvenile Detention Monitoring Form (revised 10/1/2003)
- ✓ Collocated Facility Checklist Form
- ✓ Rural Exception Checklist Form

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Section 504: Data Collection and Verification

Date Issued:	October/2003
Review Date:	Biennially thereafter
Last Review:	October/2003
Related Federal Law:	JJDP Act Section 223(a) (11)-(14)
Related CFR:	OJJDP Formula Grants Consolidated Federal Regulation, 28 CFR Part 31
Related Federal Guidance:	<i>Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 1974 as Amended (Revised 9/2003), Section 5</i>
Related MCA:	Title 41, Chapter 5, Part 19 MT Youth Court Act
Related Policies:	500- 503, 505- 507

Statement of Purpose:

It is necessary to verify data self-reported to the Juvenile Detention Reporting System (JDRS) to each facility's on-site records and interviews with youth to obtain accurate information for calculation of compliance with section 223 (11), (12), (13), and (22) of the Act. On-site data verification increases the accuracy of the reported information.

Policy:

The MBCC staff monitors will be responsible for verifying data on youth held in monitored facilities subject to inspections following OJJDP Rules and Regulations on data collection. Data will be verified for the past 12 months. i.e., if the month of the on-site visit is October 2003, then data for September 1, 2002 through August 31, 2003 will be verified. This will account for the fact that September's data would not ordinarily be reported to the JDR system until mid-October.

1. For continuity and clarification, the MBCC staff monitors will note on the Juvenile Detention Monitoring Form the individual who is responsible for reporting facility data to the JDRS, their e-mail address, and phone number. *If no one has been doing the reporting prior to the on-site visit, the monitor will request that the facility provide the name and contact information for an individual who will begin reporting effective immediately.*
2. The following data sets will be verified. (Any of the following data sets, identified and not properly reported to JDRS, will be collected.):
 - A. Juvenile Detention and Licensed Collocated Centers:
 - (1) 10% random sample of files of all youth held during the past 12 months will be traced from the facility log book to the JDRS printout and reported data verified to documentation retained in the facilities files.

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- (2) All civil, status and non-offenders held for any length of time in a secure status. (DSO)
- (3) All youth held in a secure status for more than 24 hours without a probable cause hearing in accordance with MCA 41-5-332. (DSO)
- (4) All youth currently held at the facility that self-identify a different race/ethnicity than the race ethnicity reported in JDRS. (DMC)
- (5) Federal INS wards (aliens) held for any length of time in a secure status. (DSO)

B. Juvenile Correctional Facilities

- (1) 10% random sample of files of all youth held during the past 12 months will be traced from the file to the JDRS. (Monitoring)
- (2) Any status or non-offenders in commitment cottages, units, etc. (DSO)
- (3) Any youth currently held at the facility that self-identifies a different race/ethnicity than the race ethnicity reported. (DMC)

C. Adult Jails or Lockups and unlicensed colocated detention facilities:

- (1) *In an MSA or non-MSA with alternative placements available:*
 - a. Verify 100% of 12 months of data.
 - b. Any status, civil or non-offender placed in a secure or residential room or cell or cuffed to a stationary object. (DSO)
 - c. Any juvenile occupying the booking area at the same time as an incarcerated adult. (No Contact)
 - d. Any accused criminal-type offender securely held *over 6 hours* from the time they enter a secure custody status. (Jail Removal)
 - e. Any *adjudicated* criminal-type offender held for any period of time. (Jail Removal)
 - f. Any juvenile in secure custody status that has any physical or sustained sight or sound contact with an incarcerated adult. (No Contact)
 - g. Any juvenile held for six hours or less for punitive reasons. (Jail Removal)
 - h. Any youth currently held at the facility that self-identifies a different race/ethnicity than the race ethnicity reported in JDRS. (DMC)
- (2) *In a non-MSA with no alternative placements available:*
 - a. A juvenile status, civil or non-offender is placed in a secure or residential room or cell or is cuffed to a stationary object. (DSO)
 - b. A juvenile and an incarcerated adult occupy the booking area at the same time. (No contact)
 - c. An accused criminal-type offender securely held over 6 hours and released without a probable cause hearing or other court appearance. (Jail Removal Rural Exception)
 - d. An accused criminal-type offender securely held over 24 hours, excluding Saturdays, Sundays and legal holidays from the time they

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enter a secure custody status without a probable cause hearing. (Jail Removal, and more restrictive MCA 41-5-332)

- e. An adjudicated criminal-type offender is securely held for any period of time. (Jail Removal and MCA 41-5-349)
- f. A juvenile in secure custody status, other than one adjudicated as a criminal offender in Adult District Court, has any physical or sustained sight or sound contact with an incarcerated adult. (No contact)
- g. A juvenile is held for punitive reasons. (Jail Removal)
- h. Any youth currently held at the facility that self-identifies a different race/ethnicity than the race ethnicity reported in JDRS. (DMC)

D. Non-secure holdover facilities approved by MBCC:

- (1) Per MCA 41-5-103(22), holdovers are non-secure programs that must be approved by MBCC. MBCC has developed a self-certification process for holdovers. Monitors will verify information on the self-certification forms on file at MBCC. Where programs exist without prior self-certification being sent to MBCC, monitors will determine if program meets minimum program requirements set by MBCC.

E. Counties with no detention facilities:

- (1) The Sheriff's Office will be visited at least once in every three years to determine how youth are processed, where youth await parents or transfer to another facility and probable cause hearings. Monitors will complete a Juvenile Detention Monitoring form for these sheriff's offices and review those areas where youth are processed and held for compliance with the JJDP Act and Youth Court Act.

DEINSTITUTIONALIZATION OF STATUS OFFENDERS (D.S.O.)

No status or non-offenders in secure facilities.

Statutory exceptions:

- (1) Youth held in accordance with the Interstate Compact Law as implemented by the State (Reference Interstate Compact Flowchart Attached) or
- (2) Youth held in violation of the federal handgun law or state equivalent (MCA 45-8-361(1)) as long as they are held in a juvenile facility and not an adult jail, adult lockup, or non-approved colocated facility.

NO CONTACT

Provides that no juvenile (except criminally convicted youth) will be confined in circumstances where they have contact with incarcerated adults in a secure custody status. OJJDP is now interpreting this to include contact between incarcerated adults and youth under the jurisdiction of public authority ordered to "Scared Straight" type programs. Reference page 14 OJJDP Guidance Manual (Tab 3).

JAIL REMOVAL

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Provides for no juveniles in adult jails, lock-ups or non-approved colocated facilities.

Statutory exception: Accused criminal-type offender in non-MSA's (rural areas) *awaiting an initial court appearance* if held in an area where they have no contact with adult inmates may be held for no more than 24 hours if there are no available alternative placements. (MCA 41-5-349 provides more restrictive limit of 24 hours)

Reporting exception: Accused criminal-type offenders held in an area where they have no contact with adult inmates for up to six hours for processing, but in no case overnight.

3. DISPROPORTIONATE MINORITY CONTACT

the State must track the race/ethnicity of youth in all phases of the system and to address disproportionate representation of minority populations where it exists in the system. Since the JDRS does not allow the selection of multiple race or ethnicities for one youth. Race/ethnicity options are restricted to Asian, Black, Black Hispanic, Caucasian, Hispanic, or Native American. To prevent the appearance of under-reporting DMC for youth of mixed race or ethnicity, secure facilities are expected to ask youth to self-identify their race/ethnicity for purposes of entering data in the JDRS.

Procedures:

MBCC maintains a central database computer system and program called the Juvenile Detention Reporting System (JDRS) that documents all youth securely confined in the state. A separate JDRS database and program is maintained by each facility that documents all juveniles entering and exiting their facility and is compatible with OJJDP and DOC rules for record keeping. Once a month each facility creates and exports a file that documents all youth released from their facility for the month and changes made to their facility's JDRS database since their last report and emails it to the Juvenile Justice Planner. These emailed files are imported by the JJ Planner to MBCC's central JDRS database. MBCC's annual compliance report to OJJDP is compiled from this data.

1. Jails, Lockups, and unlicensed colocated or juvenile detention facilities

- A. Facility inspection schedules are based on a calendar year basis of January 1 through December 31 such that each facility will be visited at least once in every three year period.
- B. Monitors will obtain a printout from the JJ Planner of all data reported to the MBCC central database by that facility to take on the on-site visit. Monitors will verify that:
 1. All youth held in custody at the facility, either securely or non-securely, are recorded in a juvenile log.
 2. 100% of all youth recorded as secure holds in the local facility log for the past 12 months were traced to the printout from the MBCC JDRS database for the facility, and

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3. 100% of all youth recorded as secure holds in the local facility log have requisite supporting documentation for offense and court hearing information in the facility's file for each youth held. (**Note:** It is up to the facility to obtain sufficient documentation at the time of each detention to determine that the secure detention of the youth is legal. In cases where additional information is required, the MBCC staff monitors may verify records *subsequently obtained by the facility* from other sources such as individual case files in any of the following: court records, Child Protective Services Division of the Department of Health and Human Services, and Youth Court Probation. **Staff monitors will not be responsible for visiting or contacting alternative sources for court documents or information.**)
 - C. MBCC Monitors will collect data for youth omitted or inaccurately reported to the JDRS, if any. The MBCC staff monitors will attach the data to the Juvenile Detention Monitoring Form.
 - D. MBCC Monitors will complete a Rural Exception Checklist for non-MSA facilities and a Collocated Checklist for any non-approved collocated facility. These forms will be attached to and become part of the Juvenile Detention Monitoring Form.
 - E. MBCC Monitors will obtain a copy of the facility's floor plan and written policies and procedures for managing youth in custody. These items will be attached to and become part of the Juvenile Detention Monitoring Form.
2. *Juvenile Detention and Correctional Facilities*
- A. Facility inspection schedules are based on a calendar year basis of January 1 through December 31 such that each facility will be visited annually.
 - B. Monitors will obtain a printout from the JJ Planner of all data reported to the MBCC central database for the past 12 months to take with them on the on-site visit. Monitors will verify that:
 1. All youth held in custody in the facility, either securely or non-securely, are recorded in a log.
 2. A random sample of a minimum of 10% of all youth recorded as secure holds in the local facility log and *released*² in the past 12 months were reported on the printout from the MBCC central JDRS database for the facility.
 3. A random sample of a minimum of 10% of all youth recorded as secure holds in the local facility log and *released*³ in the past 12 months had requisite supporting documentation for offense and court hearing information in the facility file for each youth held. (**Note:** It is up to the facility to obtain sufficient documentation at the time of each detention to

² To prevent duplication of reported data, the JDRS does not allow youth to be reported without complete information, **including** the date released information.

³ *ibid*

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determine that the secure detention of the youth is legal. In cases where additional information is required, the MBCC staff monitors may verify records *subsequently obtained by the facility* from other sources such as individual case files in any of the following: court records, Child Protective Services Division of the Department of Health and Human Services, and Youth Court Probation. **Staff monitors will not be responsible for visiting or contacting alternative sources for court documents or information.)**

3. *Non-secure Juvenile Holdover facilities:*

- A. Non-secure Juvenile Holdover facilities will be monitored on a calendar year from January 1 through December 31 such that every facility is visited at least once in every three years.
- B. Monitors will check with the Juvenile Justice Specialist to determine if a county has self certified a holdover program. If so, the monitor will obtain a photocopy of the "Self Certification" form and use it to verify self-certified information during the on-site visit.
- C. If a monitor discovers during an onsite monitoring visit that a county has a holdover program that has not been self certified through MBCC, the monitor will use a photocopy of the "Self Certification" form found in the back of the holdover manual located in the Appendix to certify that the program meets minimum MBCC holdover program requirements.

4. *Other Facilities*

- D. Other facilities classified as *secure*, public or private, *juvenile* facilities will be subject to the same procedures and data sets as licensed detention facilities.
- E. Other facilities classified as *secure*, public or private, *collocated juvenile* and *adult* facilities, will be subject to the same procedures and data sets as jails and lockups.

A file will be retained on each county in Montana at MBCC in the office of the Juvenile Justice Planner. Within the county file will be a file on each facility that will include:

- (1) Juvenile Detention Monitoring Forms
- (2) Corrected or inaccurately reported data for the JDRS.
- (3) Collocated Checklist or Rural Exception Checklist if applicable
- (4) Facility floor plan and written policies and procedures for managing youth in custody.
- (5) Correspondence
- (6) Inspection Notes

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Section 505: Monitoring Report Period

Date Issued:	October/2003
Review Date:	Biennially thereafter
Last Review:	October/2003
Related Federal Law:	JJDP Act Section 223(a) (11)-(14)
Related CFR:	OJJDP Formula Grants Consolidated Federal Regulation, 28 CFR Part 31
Related Federal Guidance:	<i>Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 1974 as Amended (Revised 9/2003), Section 5</i>
Related MCA:	Title 41, Chapter 5, MT Youth Court Act
Related Policies:	500 – 504, 506 - 507

Statement of Purpose:

A designated monitoring report period is essential in providing accurate year-to-year monitoring reports. A 12-month report period is the soundest method and leaves no room for statistical errors.

Process:

The report period selected is from January 1 through December 31 of each year. i.e., the report due to OJJDP on March 31, 2003 will be based on the calendar year 2002 data.

Procedures:

1. All data collected for the OJJDP Monitoring report will reflect that it has been collected from January 1 through December 31 of the respective calendar year for the report.

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Section 506: Method of Reporting

Date Issued:	October/2003
Review Date:	Biennially thereafter
Last Review:	October/2003
Related Federal Law:	JJDP Act Section 223(a) (11)-(14)
Related CFR:	OJJDP Formula Grants Consolidated Federal Regulation, 28 CFR Part 31
Related Federal Guidance:	Guidance Manual for Monitoring Facilities Under the <i>Juvenile Justice and Delinquency Prevention Act of 1974 as Amended (Revised 9/2003)</i> , Section 5
Related MCA:	Title 41, Chapter 5, MT Youth Court Act
Related Policies:	500 – 505

Statement of Purpose:

The data and information collected in the Monitoring policies (500-505) must be analyzed, reviewed, and written up in the form of the annual Monitoring Report, which must be submitted to OJJDP by March 31 of each year.

Process:

It is the MBCC Juvenile Justice Planner's responsibility to collect, verify and compile the data for the report each year. The Juvenile Justice Planner will complete the narrative for the report with input from the MBCC staff monitor contractor as needed. The Juvenile Justice Specialist retains the primary responsibility for the report.

Procedures:

1. Facilities will report youth discharged from their facilities to the JDRS and export the files to MBCC central database on a monthly basis. All facilities will have reported all youth discharged from their facility no later than January 31 following the end of the reporting year.
2. Data will be verified 100% for adult jails, lockups, and non-approved collocated facilities and on a sample basis for licensed juvenile detention and collocated facilities by MBCC staff monitors during routine on-site visits.
3. After all data has been collected, the Juvenile Justice Planner will use the JDRS program to extract the data that relates to the annual Monitoring Report and will complete the related sections of the report.
4. On or before March 31 of each year, MBCC will submit three copies of the Monitoring Report to the OJJDP Administrator.

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5. MBCC will make available to the Youth Justice Council and other interested parties copies of the report.

Forms:

- ✓ OJJDP Blank State Monitoring Report Sample

Attachments:

- ✓ Montana State Monitoring Reports 2000-2001

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Section 507: Compliance Issues

Date Issued:	October/2003
Review Date:	Biennially thereafter
Last Review:	October/2003
Related Federal Law:	JJDP Act Section 223(a) (11)-(14)
Related CFR:	OJJDP Formula Grants Consolidated Federal Regulation, 28 CFR Part 31
Related Federal Guidance:	Guidance Manual for Monitoring Facilities Under the <i>Juvenile Justice and Delinquency Prevention Act of 1974 as Amended (Revised 9/2003)</i> , Section 5
Related MCA:	Title 41, Chapter 5, MT Youth Court Act
Related Policies:	200, 500-506

Statement of Purpose:

Prior to a discussion of violation procedures it is critical to provide facilities with information on what constitutes compliance and noncompliance with the JJDP Act. For this purpose the following policy is offered to clarify and define compliance and non-compliance.

Policy:

This policy is based upon the JJDP Act and Formula Grant Regulations and Montana Youth Court Act whichever is most restrictive. It will be most useful if it is freely disseminated in the field. What follows are the rules and regulations under each of the four statutory requirements. Other requirements on funding allocations and rules, organizational regulations, etc., may be obtained from MBCC.

The following are the three sections of the Act requiring a report:

1. *223 (a)(11) - Deinstitutionalization of Status Offenders:*

No status or non-offenders should be held in secure facilities. Congress recognizes that there are exceptions. It is clearly the intent of the law that these are the exceptions and not the rule however.

A. Status and non-offenders may never be held in a secure custody status in a juvenile detention center, a collocated facility, or an adult jail or lockup. Secure custody status is when a juvenile offender is physically detained or confined in a locked room or area. Secure detention or confinement may result either from being placed in such a room or area, *even if the lock is not locked*, and/or being physically secured to a cuffing rail or other stationary object.

2. *223 (a)(12) – No Contact (formerly known as sight and sound separation):*

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The term "contact" is defined to include any physical or sustained sight and sound contact between juveniles in a secure custody status and incarcerated adults, including inmate trustees. Sound contact is further defined to mean any direct oral communication between incarcerated adults and juveniles. Sight contact is further defined to include clear visual contact with incarcerated adults within close proximity. Secure custody status is when a juvenile offender is physically detained or confined in a locked room or area. Secure detention or confinement may result either from being placed in such a room or area, even though it is unlocked, and/or being physically secured to a cuffing rail or other stationary object. Separation must be accomplished architecturally or through written policies and procedures in all secured areas. OJJDP considers "Scared Straight" and similar programs that place juveniles and incarcerated adults together to be a violation of this portion of the JJDP Act.

3. 223 (a)(13) -Jail Removal:

This section states that no juvenile may be placed in an adult jail or lockup. The exceptions that Montana may use are:

- a. A juvenile waived to adult court *after* a transfer hearing prior to admittance into an adult jail or lockup. No contact with incarcerated adults must be strictly adhered to while juveniles are in a secure custody status. (MCA 41-5-206(7))
- b. A juvenile accused of a criminal type offense (an offense if committed by an adult) may be held for up to six hours for processing, but in no case, overnight. If a youth is being held on a probation violation or criminal contempt, either the original offense or the offense that violated probation must be a criminal offense. Sight and sound separation must be strictly adhered to while juveniles are in a secure custody status.
- c. A juvenile accused of a criminal type offense (an offense if committed by an adult) may be held for up to 24 hours, excluding Saturdays, Sundays and legal holidays, pending a probable cause hearing in a non-MSA community and no alternative placement is available. If a youth is being held on a probation violation or criminal contempt, either the original offense or the offense that violated probation must be a criminal offense. No contact with incarcerated adults must be strictly adhered to while juveniles are in a secure custody status.

4. 223 (a)(23) - Disproportionate Minority Confinement

This section requires that states address efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups is such proportion exceeds the proportion such groups represent in the general population.

The state must verify that facilities are collecting and reporting accurate race/ethnicity on confined youth.

Procedures:

1. The MBCC staff monitors will make available the content of this policy to all facilities receiving an inspection that hold juveniles pursuant to public authority prior to the facility being subject to a violation procedure.

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2. The MBCC staff monitor, the MBCC Juvenile Justice Planner, and the MBCC Juvenile Justice Specialist will be available to anyone desiring additional information or clarification on any of the sections of the law.

Appendix:

- ✓ Interstate Compact on Juveniles Rules and Regulations

Attachments:

- ✓ Decision Tree for Runaway Youth from Outside Montana
- ✓ Decision Tree for Placement of Youth in Accordance with the Youth Court Act

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Section 600: Violation Procedures

Date Issued:	October/2003
Review Date:	Biennially thereafter
Last Review:	October/2003
Related MCA:	41-5-1908 Rule Making Authority
Related Policies:	102

Statement of Purpose:

Inspections or other mechanisms, which identify incidences of noncompliance, or other deficiencies which may be dangerous to confined juveniles, are only of value when MBCC can act to correct or eliminate the identified problem. Written violation policies and procedures should be available so all concerned will know what is expected of them and what action may be taken.

Process:

All classified facilities should have available to them, through MBCC, the compliance issues outlined in policy 507. The mechanisms for violation reports take several forms; 1) through the MBCC staff monitors, 2) the Juvenile Program staff, 3) interested citizens, 4) parents, or 5) an oversight agency. While the MBCC Juvenile Justice Planner is responsible for investigation of violation reports, the MBCC Juvenile Justice Specialist retains this responsibility and merely delegates this task.

Procedures:

1. A violation report may come from or be received by the MBCC staff monitor.
2. The procedures are fully described in policy 102, Legislative Administrative Violation Procedures, please refer to it.
3. The Youth Justice Council will receive reports on violations throughout the year on an as needed basis.
4. The Executive Director of the Board of Crime Control will be immediately notified of violation(s) that threaten funding allocations.

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Section 700: Policy Review Dates

All policies are to be reviewed by the MBCC Juvenile Justice Specialist, Juvenile Justice Planner and staff monitors on or before October 30 of each non-legislative year.

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Section 800: APPENDICES

- ✓ Sample Juvenile Custody Policy and Procedures for Montana Law Enforcement Departments
- ✓ Montana Juvenile Detention Manual and Custody Requirements
- ✓ Holdover Program Policies/Procedures Resource Manual
- ✓ Interstate Compact on Juveniles Rules and Regulations

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Section 801: FORMS

- ✓ Collocated Checklist
- ✓ Compliance Violation Form
- ✓ Juvenile Detention Monitoring Form
- ✓ Monitoring Classification Master List
- ✓ Rural Exception Checklist

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Section 802: ATTACHMENTS

- ✓ MBCC Organizational Chart
- ✓ Governor's Executive Order
- ✓ MBCC introductory letter of monitoring authority
- ✓ Montana State Monitoring Reports 2000-2001
- ✓ Decision Tree for Runaway Youth from Outside Montana
- ✓ Decision Tree for Placement of Youth in Accordance with Youth Court Act